No. 96-1308

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

MARY ANN LOVELL,

Petitioner,

vs.

GARY HURFORD, President; RAY L. HUNT, Chairman; HUNT OIL COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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LIST OF INTERESTED PARTIES

The Petitioner is Mary Ann Lovell.

The Respondents are Gary Hurford, Ray L. Hunt and Hunt Oil Company. Frederick W. Bradley is counsel of record for the Respondents. The parent company is Hunt Consolidated, Inc. The nonwholly owned subsidiaries are: Hunt Oil Company of Australia, L.L.C.; Yemen Refining and Marketing Company; Yemen Exploration and Production Company, Hunt Overseas Exploration Company, L.P.; Paloma Pipe Line Company.

Other interested parties, who were defendants in one or more of the consolidated actions below, are: (1) Mills Timmons & Flowers, Succession of Meaker White, Wayne Timmons, represented by J. Broocks Greer, III; (2) James Hatch, Hatch & Smith, represented by Gus A. Fritchie, III, Montgomery, Barnett, Brown, Read, Hammond & Mintz; and (3) Kenneth Hubbard, represented by John W. Montgomery.

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Respondents request that the Court deny the Petition for Writ of Certiorari seeking a review of a decision by the United States Court of Appeals for the Fifth Circuit. The *per curiam* opinion was filed December 26, 1996, and a copy of the decision is included in the Petition.[1]

STATEMENT OF THE CASE

Respondents respectfully oppose the Petition for Writ for Certiorari filed by Mary Ann Lovell ("Lovell"). Although her Petition is disjointed and virtually incoherent, the essence of the complaint appears to be that a bank, Planter's Bank & Trust Company, permitted an "illicit person" to take various papers and "other treasures" from the safe deposit box of the decedent, Mrs. Meaker Glover White. Lovell further claims that she was the only person that should have had access to the safe deposit box, presumably on the grounds that she was the administratrix of the White Estate ("the Estate").

Lovell also seems to complain that Respondent, Hunt Oil Company ("Hunt"), owed her a duty to release certain assets of the Estate directly to her. Notably Lovell makes no allegations against the individual Respondents, Ray L. Hunt and Gary Hurford.

A. Course of Proceedings and Disposition of the Case Below

Pro se Petitioner Lovell filed suit in the Eastern District of Louisiana on February 15, 1996 against Gary Hurford, Ray L.

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1. Petitioner attached an incomplete copy of the *per curiam* decision as Appendix 2-3 in the Petition. That excerpted copy left out the following language: "We have carefully reviewed the briefs on file and the record and are satisfied that the reasons given by the District Court in its Memorandum and Order filed June 14, 1996, in the consolidated matters are correct." Ms. Lovell does include the entirety of the *per curiam* decision, however, on page 12 of her Petition in the "Statement of the Case" section.

Hunt and Hunt Oil Company for alleged violations of her constitutional rights. (U.S.D.C. No. 96-CV-584-G). Rec. Vol. 1, p. 194. As with all of her pleadings and briefs, the Complaint contained a hodge-podge of references to historical, biblical, legal and personal facts — arranged in a manner which was virtually impossible to comprehend. Notwithstanding the Complaint's lack of clarity, Hunt believed that the essence of Lovell's cause of action was as follows. Lovell claimed that she is an heir of Meaker Glover White ("Meaker"), who was an heir of Jack Glover ("Glover"). Glover owned an interest in the minerals in certain tracts of land in Claiborne Parish, Louisiana, on which Hunt Oil Company was producing oil. Meaker died in February 1992. Thereafter, Lovell filed succession proceedings as administratrix for the Estate in the Second Judicial District Court of Claiborne Parish, Louisiana (the "state court"). Rec. Vol. 1, p. 13. In connection with these proceedings, the state court had ordered Hunt to pay all funds due to the Estate into the office of the clerk of court of Claiborne Parish pending a determination of ownership of those funds. Rec. Vol. 1, pp. 272-275. Contrary to that order, Lovell demanded that Hunt turn over those funds directly to her. Dissatisfied with the company's refusal to do so, Lovell filed a lawsuit in which she claimed that: (1) Defendants, by refusing to pay the funds directly to Lovell, violated her constitutional rights; (2) Hunt fraudulently disbursed assets of Meaker's estate; and (3) Hunt's letter of December 29, 1995, violated her rights as a citizen of the State of Louisiana. As noted above, the Complaint provided no clear explanation of any of these points.

On April 10, 1996, defendants filed a Motion to Dismiss in which they asserted that: (1) the Court lacked subject matter jurisdiction over the case; (2) Plaintiff was not able to prove a set of facts consistent with the allegations in the Complaint; (3) the Complaint failed to comply with Fed. R. Civ. P. 8; and (4) the Court should abstain from exercising jurisdiction over this action.

After filing Civil Action No. 96-584, Lovell filed six other *pro se* lawsuits in the Eastern District of Louisiana. All of these suits related generally to Lovell's alleged status as "heir" to the Estate. These cases were consolidated into a single action, *sua sponte,* by Chief Judge Morey L. Sear.

The other action involving Respondents Hurford and Hunt was U.S.D.C. No. 96-CV-1184-G, which was filed by Lovell on April 1, 1996. Rec. Vol 5, p. 68. Ironically, the Complaint did not mention Hurford or Hunt throughout its text. The Complaint was cumbersome and convoluted, but it appeared that a violation of privacy argument was being made against a bank for its failure to prevent certain materials from being taken from a safety deposit box. Lovell alleged that her privacy was violated when Planter's Bank & Trust Company ("Planter's") allowed unauthorized persons to enter and seize property left to her by Meaker and located in the safety deposit box owned by Meaker's succession. Lovell also argued that the law firm of Newell & Newell, specifically David Newell, acted as attorney-in-fact without proper authority with regard to a release from a bond in Meaker's succession. As noted, the Complaint made no allegations whatsoever against Hurford and Hunt (both of whom are executives with Hunt Oil).

In response to the later suit, Respondents filed a Motion to Dismiss in which they asserted that: (1) the Court lacked subject matter jurisdiction; (2) plaintiff failed to allege personal jurisdiction over defendants; (3) plaintiff failed to explain why venue was proper in the Eastern District; (4) the Complaint failed to state a claim upon which relief could be granted; and (5) the Complaint should be dismissed pursuant to the doctrine of *lis pendens* because of the matters pending before the Court in Civil Action No. 96-584.

After studying the briefs, Chief Judge Sear, in a Minute

Entry dated June 13, 1996, dismissed Civil Action Nos. 96-584 and 96-1184 for failure to state a claim upon which relief could be granted under federal law. The Minute Entry was filed on June 17, 1996. In addition, Chief Judge Sear dismissed on similar grounds the other civil actions filed by Lovell and consolidated by him. Rec. Vol. 1, pp. 13-21. The judge also ordered Lovell and any future counsel to verify all future complaints and pleadings and provide a list of all lawsuits previously filed on related causes of action.

Lovell then appealed to the Court of Appeals for the Fifth Circuit. There she argued that "treasures were taken from the safe deposit box at Planter's Bank" and that the payment of the royalties by Hunt Oil Company into the office of the clerk of court indicated that she was "not recognized" by Hunt Oil Company and the Second Judicial Court in and for Claiborne Parish, Louisiana. On December 26, 1996, the Fifth Circuit issued a *per curiam* opinion in which it affirmed the district court's dismissal of the consolidated cases for the reasons given by the trial court in its memorandum and opinion.

B. Corrections of Misstatements in the Petition

The facts and argument in Lovell's Petition, as in all other legal papers filed by her, are virtually incomprehensible. Indeed, her "Argument" to this Court must literally be read between the lines because so much of the "Argument" merely consists of excerpts from various court papers. Very little in this Petition even relates to Hunt Oil Company, and there is nothing in the Petition that alleges or even discusses the liability of the two individual Respondents, Messrs. Hunt and Hurford.

Lovell asserts that someone had access to a safe deposit box rented by Mrs. Meaker Glover White, who died in 1992. Lovell further asserts that she was the only person who should

have had access to the box as the administratrix of that Estate. Lovell does not argue that Respondents had any connection with the safe deposit box or that Respondents did anything at all in connection with the safe deposit box.

With specific regard to Respondents, however, there are certain misstatements that must be corrected. First, Hunt did not disburse some of the Estate to parties "not rightful parties" (Petition, p. 9). Rather, Hunt deposited suspended monies and royalty revenues attributable to the Estate into the registry of the Court. This action was taken to comply with the January 29, 1996 order of the state court. Second, Hunt has not "continued inappropriately to hold on to without proper cause 'fruits, assets and distributions' " (Petition, p. 9). Rather, Hunt merely followed the order of the state court by depositing funds into the court's registry. Third, Hunt did not "continu[e] to hold on to property legally and appropriately belonging to [petitioner] Mary Ann Lovell." Instead, and again, Hunt merely followed the directive of the state court in its order which required that the funds "be distributed solely by order of this Court." Therefore, it is also a misstatement for Petitioner to claim that "Hunt Oil Company has been uncooperative in bringing about a peaceful resolution to this subject matter." (Petition, p. 9).

REASONS FOR DENYING THE WRIT

I.

NO VALID REASONS EXIST FOR GRANTING CERTIORARI.

None of the considerations cited in Rule 10 of the Supreme Court Rules are present here. The District Court dismissed the actions for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil

Procedure. Specifically, in its Memorandum, Chief Judge Sear stated that Lovell was not alleging constitutional violations at all. Instead, she was simply complaining about the state court's order requiring Hunt Oil Company to pay the royalties to the clerk of court instead of to her and about Hunt's compliance with that order. Obviously, the proper forum for Lovell's claim is the state court in Louisiana. The District Court also stated that there was no federal or diversity jurisdiction upon which to base the exercise of federal jurisdiction. The District Court appropriately observed that the claims were more properly based on state law.

The United States Court of Appeals for the Fifth Circuit affirmed the trial court for the reasons in the District Court's memorandum. The *per curiam* opinion of the Fifth Circuit was rendered, and the decision was unpublished indicating that the decision had no legal significance.

There are no compelling reasons to grant Lovell's Petition. There is no court of appeals decision that is in conflict with other courts of appeals on an important matter. There is no important federal question. Indeed, there is no federal jurisdiction. This is not a case where a lower court has "departed from the accepted and usual course of judicial proceedings." Rule 10(a).

II.

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT WAS CORRECT IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE CONSOLIDATED CASES.

Courts of appeals review Rule 12(b)(6) dismissals *de novo*. *Cinel v. Connick*, 15 F.3d 1338, 1341 (5th Cir.), *cert. denied*, 115 S. Ct. 189 (1994). Dismissals are proper when there are no

facts that would allow a plaintiff to recover. *Carter by Carter v. Cornwell,* 983 F.2d 52, 54 (6th Cir. 1993). Chief Judge Sear at the district level and a three-judge panel at the appellate level unanimously agreed that there were no allegations made by Lovell that would allow her to pursue her claims in federal court. There was no diversity jurisdiction because there was no allegation that the claim exceeded $50,000. Nor was there any federal question. Both lower courts acted properly, and there is nothing for this Court to review.

III.

HUNT OIL COMPANY DOES NOT HAVE A DUTY TO RELEASE "ASSETS AND DISTRIBUTION" OF THE MEAKER GLOVER WHITE ESTATE.

This Court does not have jurisdiction to consider the ruling of the Second Judicial District Court for and in the Parish of Claiborne, which required Hunt Oil Company to deposit royalty revenues into that state court's registry. The state court did not decide a federal question such that jurisdiction by this Court would be appropriate under Rule 10 of the Supreme Court Rules. Indeed, the Louisiana court decided no federal question and was not presented with one.

Rather, the Louisiana court merely sought to protect the assets of an estate by requiring royalty revenues to be deposited into the court's registry. Claimants such as Lovell were free to join in that action to pursue any rights they might have. The state court's order was made pursuant to a motion by two of the estate's heirs and devisees. Neither of these was Mary Ann Lovell. Indeed, Lovell is not even named as an heir, legatee, devisee, or executor in the Will of the decedent Meaker Glover White. Apparently, Lovell claims that she is an heir because she and Meaker Glover White shared the same father although not the same mother.

Hence, the question decided by the Louisiana court was simply one of state procedure — requiring a stakeholder to place funds into the registry of the court until the succession (probate) was closed and the assets of the estate distributed. Lovell's remedy, if any, is in that forum.

IV.

HUNT OIL COMPANY DOES NOT VIOLATE PETITIONER'S "CONSTITUTIONAL RIGHTS" BY DEPOSITING FUNDS INTO THE REGISTRY OF THE COURT.

Respondents do not violate Lovell's Constitutional rights by following a state court's directive to deposit funds into the court's registry pending the distribution of the Estate's assets. Lovell cites no authority for her proposition that Respondents' actions constitute such a violation. In fact, the United States Constitution does not provide Lovell such a right. Moreover, Lovell is *not* the owner of the property. Rather, she merely claims an ownership interest on the grounds that she is an heir. Clearly, Lovell's proper recourse is in state court, where she can pursue her state law claim, appeal any decision to the Louisiana Court of Appeals, and, thereafter, seek review from the Louisiana Supreme Court. She has chosen not to follow that route.

CONCLUSION

Lovell has provided no reasons why this Court should grant a writ of certiorari. The decisions of the lower federal courts were appropriately decided, and the pleadings in the state court establish that Respondents properly followed the order of the state court.

Respondents respectfully request that this Court deny Lovell's Petition for Writ of Certiorari.

Respectfully submitted,

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